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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**  
5

6 THE BANK OF NEW YORK MELLON, )

7 Plaintiff, )

8 vs. )

9 ELKHORN COMMUNITY ASSOCIATION, et al., )

10 Defendants. )  
11

Case No. 2:16-cv-02571-JCM-CWH

**ORDER**

12 Presently before the court is defendant 7321 Wandering Street Trust's ("Wandering Street")  
13 Motion to Strike Plaintiff's Jury Demand (ECF No. 29), filed on April 13, 2017. Plaintiff The  
14 Bank of New York Mellon (the "Bank") filed a response (ECF No. 32) on April 27, 2017.  
15 Wandering Street did not file a reply.

16 This case arises from a dispute regarding a homeowners' association foreclosure sale. The  
17 Bank asserts a claim for declaratory relief against defendants Wandering Street and Elkhorn  
18 Community Association (the "HOA"), as well as claims for breach of Nevada Revised Statutes  
19 § 116.1113 and wrongful foreclosure against the HOA. (Compl. (ECF No. 1).) The Bank requests  
20 injunctive relief against Wandering Street. (*Id.*) Wandering Street moved to dismiss all claims  
21 asserted against it, and the HOA joined in that motion. (Mot. to Dismiss (ECF No. 24); Joinder to  
22 Mot. to Dismiss (ECF No. 27).) The HOA filed an answer, a third-party complaint bringing breach  
23 of contract, indemnity, and contribution claims against third-party defendant Anguis & Terry  
24 Collections, LLC, and a motion for summary judgment.<sup>1</sup> (Ans. & Third-Party Compl. (ECF No.  
25 10); Mot. Summ. J. (ECF No. 42).) The Bank also moved for summary judgment. (Mot. Summ. J.  
26 (ECF No. 43).) The dispositive motions are pending before the United States district judge  
27 assigned to the case, who will address them in due course.  
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<sup>1</sup> Anguis & Terry has not appeared in this case.

1 Wandering Street<sup>2</sup> now moves to strike the Bank's jury demand, arguing there is no right to  
2 a jury trial in this case because the relief the Bank seeks—a determination that the Bank's deed of  
3 trust was not extinguished by the homeowners' association foreclosure sale—is equitable in nature.  
4 The Bank responds that although it seeks equitable relief, the pleadings raise various legal issues  
5 that should be resolved by a jury, such as whether the sale was commercially reasonable, whether  
6 the sale was conducted in good faith, and whether the Bank had constructive notice of the sale.  
7 The Bank also argues that it is entitled to a jury trial on its declaratory relief, wrongful foreclosure,  
8 and § 116.1113 claims.

9 Under Rule 38 of the Federal Rules of Civil Procedure, “a party may specify the issues that  
10 it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the  
11 issues so triable.” Fed. R. Civ. P. 38(c). “The trial on all issues so demanded must be by jury  
12 unless . . . the court, on motion or on its own, finds that on some or all of those issues there is no  
13 federal right to a jury trial.” Fed. R. Civ. P. 39(a).

14 Here, the Bank “demands a jury trial on all issues.” (Jury Demand (ECF No. 26) at 2.)  
15 Wandering Street's motion to dismiss is pending, it has not filed an answer, and the pleadings  
16 remain open. Given the case's procedural posture, it is unclear to the court whether it can decide  
17 the motion to strike at this time. Specifically, without Wandering Street's answer, it appears the  
18 court cannot determine the universe of issues that may be triable before a jury because it does not  
19 know which allegations are admitted or denied, or whether Wandering Street will assert claims that  
20 are triable to a jury. The court therefore will order the parties to submit additional briefing on  
21 whether a motion to strike a jury demand is premature if the pleadings remain open. Briefs must be  
22 limited to five pages per party and should be filed by January 8, 2018.

23 IT IS SO ORDERED.

24 DATED: December 18, 2017

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26 **C.W. Hoffman, Jr.**  
27 **United States Magistrate Judge**

28 <sup>2</sup> The HOA did not join in Wandering Street's motion to strike the jury demand.